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SUBJECT: CONSTITUTIONAL AMENDMENTS REFERENDUM UPDATE

REF: 08 BAKU 1185

Classified By: Charge d'Affaires Donald Lu, Reasons 1.4 b and d.

¶1. (C) Summary: Azerbaijan's Parliament and Constitutional Court have cleared the way for a referendum to be held on March 18 on 29 proposed amendments to Azerbaijan's Constitution on a wide range of topics. While some amendments appear to be benign, such as protecting wildlife, several challenge the GOAJ's stated commitment to democratic reform and respect for human rights. The proposed amendments would remove term limits for the presidency and/or provide for a term extension, allowing the current president to stay in office after his current term ends in 2013. Several amendments would also weaken respect for freedom of speech and religion. Opposition parties and civil society have begun to unite behind their disagreement with this referendum, but it is unlikely that they will be able to stop the passage of any of these measures. End Summary.

¶2. (SBU) As reported reftel, the Parliament of Azerbaijan voted on 19 December 2008 to call a referendum on 29 changes to the Constitution. On 24 December 2008, President Ilham Aliyev's birthday, the Constitutional Court approved the measure. The referendum was then set for March 18. The Central Election Commission (CEC) and the Presidential Administration are now working on arranging the technical aspects of holding the referendum. The CEC held its first session in connection with the referendum on January 8, and issued a number of technical instructions, all of which are similar to those issued for the October 2008 presidential election.

29 ITEMS ON BALLOT

¶2. (SBU) There will be 29 separate items on the referendum ballot, each representing a new amendment to the Constitution. Voters will be able to vote on each item separately, meaning they will have a daunting array of 29 choices to make in the voting booth.

¶3. (SBU) The amendment that has received the most attention is the one repealing paragraph 5 of article 101 which states "No one may be elected President of the Azerbaijan Republic more than two times." This section would be eliminated, and in its place a new section stating that presidential elections may be "postponed during times of war" would be added. In a separate item, parliamentary elections would also be allowed to be postponed in times of war. (Note: Members of parliament have never faced term limits.

Azerbaijan officially is still at war with Armenia over Nagorno-Karabakh, in spite of a 1994 cease-fire agreement. End note.) Under the guise of expanding democracy, a proposed constitutional amendment would broaden "the legislative initiative" by allowing citizens or private groups to submit legislative proposals to parliament. Citizens or groups, however, would have to gather 40,000 signatures to support the effort.

14. (SBU) Other items on the referendum also show a troubling trend away from respect for human rights. One amendment would eliminate article 71, paragraph 2 which currently reads "no one can restrict protection of human rights and liberties." This would be replaced with a paragraph stating "everyone's rights and liberties are restricted by the laws of this Constitution as well as by the rights and liberties of others." Several of the amendments will make it harder for journalists to write stories about members of government including: a prohibition on recording people by camera, video, or voice without their permission; a prohibition on interference in private/family life; a provision calling for punishment of any disrespect for state symbols; and adding a paragraph to article 50 stating "everyone has the right to refute information violating his/her rights or damaging his/her interests published in the mass media." An amendment to article 18, paragraph 2 expands "religions" to "religious trends" in terms of a ban on spreading and promoting ideas that "humiliate people's dignity."

15. (SBU) There are also several amendments that can be seen as neutral or positive to Azerbaijan's democratic development

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and respect for human rights. These include: a ban on child labor; the state taking control of care for orphans; renaming the National Bank to be the Central Bank; a provision stating that those arrested should immediately be read their rights and explained the reason for their detention; and decisions of the Constitutional Court and the Supreme Court must be published.

"AGITATION" GROUPS FORMING

16. (U) Under the Election Code, a group of citizens may form an official group to conduct an "agitation" campaign on the referendum. In order to register with the CEC as an official group, the group must submit documents proving they have at least 2,000 members, and gather signatures of 40,000 registered voters. Smaller groups can be registered with constituency election commissions, but then the group would only be allowed to campaign in that constituency. Once a group has registered as an lobbying group, it is eligible for free television airtime on public TV, similar to the rules for a registered presidential candidate. Documents are due to the CEC on February 1.

17. (SBU) The ruling Yeni Azerbaijan Party has already begun to collect signatures for its lobbying efforts. Opposition parties, however, have not agreed whether to form a united group or try to register as several groups. The Musavat Party originally announced that it would form an opposition group under the name "Republicans," while the Azadliq Bloc and Eldar Namazov's "For the Sake of Azerbaijan" Forum would form a separate group. On January 12 however, all five major opposition parties, the Azerbaijan Democratic Party (leader: Sardar Jalaloglu) and the Umid Party (leader: Iqbal Aghazade), who are considered "constructive opposition", and more than 20 NGOs including religious NGOs announced that they would form a united group called the "Civil Movement to Fight for Karabakh and Republic." The Musavat Party still insists, however, that it will try to register as a separate group, as having two groups will allow the opposition more free airtime.

COMMENT

18. (C) Given the widespread disagreement with the referendum across the range of active opposition and civil society groups, it is likely that more meetings and demonstrations will take place in the months leading up to the referendum. If the opposition succeeds in getting registered as one or more "agitation" groups, they will have the legal right to campaign across the country against the referendum. This campaign will be a serious test of the GOAJ's commitment to uphold the improved Election Code and Law on Freedom of Assembly. Even if the GOAJ allows the opposition to hold demonstrations, however, there is little support for their views among the general population. Given that the amendments require only a simple majority of 25 percent voter turnout to pass, it is likely that the ruling party will prevail and all 29 proposed amendments will become part of Azerbaijan's Constitution. If so, President Aliyev and Members of Parliament could extend their terms in office indefinitely, either by running for re-election (without term limits) or by employing the pretext of war as a reason for postponing elections. In a political environment in which freedom of speech and assembly is severely restricted, these particular amendments eliminating term limits and postponing elections would represent a serious setback for developing a system of checks and balances on the executive branch of government.

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